

Amendment No. 3 to SB1088

**Beavers
Signature of Sponsor**

AMEND Senate Bill No. 1088

House Bill No. 1198*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 17, Chapter 5, is amended by deleting the language “court of the judiciary” each time that language appears, and by substituting instead the language “board of judicial conduct”.

SECTION 2. Tennessee Code Annotated, Section 17-5-201, is amended by deleting the section in its entirety and substituting instead the following:

(a) Notwithstanding any other provision of law to the contrary, the court of the judiciary is reconstituted effective October 1, 2012 and the terms of the present members of the court of the judiciary shall terminate on such date. On that date, there is created a board of judicial conduct to consist of sixteen (16) members to be selected in the following manner:

(1) One (1) member who is a retired trial court judge, to be appointed by the Tennessee judicial conference;

(2) One (1) member who is a retired appellate court judge, to be appointed by the Tennessee judicial conference;

(3) One (1) member who is a retired general sessions court judge, a retired municipal court judge, or a retired juvenile court judge, to be appointed by the Tennessee judicial conference. In making an appointment under this subdivision (3), the judicial conference shall attempt to rotate the appointment among a retired general sessions court judge, a retired municipal court judge and a retired juvenile court judge;

(4) Four (4) members of the public who are not judges or attorneys at law, two (2) of whom to be appointed by the speaker of the

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senate, and two (2) of whom to be appointed by the speaker of the house of representatives;

(5) Two (2) members who are current or retired district attorneys general or assistant district attorneys general, one (1) of whom to be appointed by the speaker of the senate and one (1) of whom to be appointed by the speaker of the house of representatives;

(6) Two (2) members who are current or retired district public defenders or assistant district public defenders, one (1) of whom to be appointed by the speaker of the senate and one (1) of whom to be appointed by the speaker of the house of representatives;

(7) Two (2) members who are current or retired law enforcement officers, one (1) of whom to be appointed by the speaker of the senate and one (1) of whom to be appointed by the speaker of the house of representatives;

(8) Two (2) members to be appointed by the Governor; and

(9) One (1) member who is a member the bar of this state in good standing, to be appointed by the Tennessee bar association.

(b) The board shall select its own presiding judge.

(c) Each member of the board of judicial conduct shall serve for a term of two (2) years and shall be eligible for reappointment to one (1) additional term.

Vacancies on the board for an unexpired term shall be made for the remainder of the term by the appointing authority of the original appointment.

(d)

(1) The presiding judge shall divide the board into a hearing panel of five (5) members and two (2) investigative panels of three (3) members. Membership on the panels may rotate in a manner determined by the presiding judge; provided, that no members shall sit on both the hearing and investigative panels for the same proceeding.

(2) A hearing panel has the duty and authority to rule on prehearing motions, conduct hearings on formal charges and make findings, conclusions, and impose sanctions or dismiss the case.

(3) An investigative panel has the duty and authority to:

(A) Review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(B) Review the recommendations of disciplinary counsel after full investigation and approve, disapprove or modify the recommendations as provided in § 17-5-304.

(e) Any appointing authority, in making its appointments, shall do so with a conscious intention of selecting a body that reflects a diverse mixture with respect to race, including the dominant ethnic minority population, and gender.

SECTION 3. Tennessee Code Annotated, Title 17, Chapter 5, Part 2, is amended by adding the following as a new section:

17-5-207.

(a) On a quarterly basis, the board of judicial conduct shall file a report with the chairman of the senate judiciary committee and house judiciary committee detailing the following information:

(1) The number of complaints against judges filed during the previous quarter;

(2) The disposition of each complaint; and

(3) The status of any preliminary investigation, investigative panel investigation or trial authorized or ongoing by the board.

(b) The quarterly report shall not reveal the name of any judge against whom a complaint has been filed but shall indicate if more than one (1) complaint has been filed against a particular judge. However, if more than one (1) complaint has been filed against the same judge, the chairman of either judiciary committee may contact the presiding judge of the board for the purpose of inspecting all complaints filed against such judge to determine if further action by the general assembly is warranted.

SECTION 4. Tennessee Code Annotated, Title 17, Chapter 5, is amended in § 17-5-205, § 17-5-206, § 17-5-301(c)-(i), § 17-5-302, § 17-5-306, § 17-5-307(f)-(g), § 17-5-308, § 17-5-309, §§ by deleting the language “the court” each time that language appears, and by substituting instead the language “the board”.

SECTION 5. Tennessee Code Annotated, Section 17-5-304, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Disciplinary counsel shall evaluate all information coming to the counsel’s attention by complaint, upon the request of any member of the board or from any other credible source that alleges judicial misconduct or incapacity.

(b) The complaint shall allege specific facts directly relating to the alleged misconduct or incapacity of the judge in question. All complaints shall be reviewed by disciplinary counsel and if, in the judgment of disciplinary counsel, the complaint establishes probable cause that the conduct complained of occurred and violates § 17-5-302, counsel shall, subject to review by the investigative panel pursuant to subdivision (c)(3), conduct a preliminary investigation. If the disciplinary counsel believes the complaint fails to establish probable cause that either the conduct occurred or the conduct constituted a violation of § 17-5-302, counsel shall, subject to review by the investigative panel

pursuant to subdivision (c)(3), dismiss the complaint, or if appropriate, refer the matter to another agency.

(c)

(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether the specific facts alleged are true and, if so, whether the facts establish probable cause that a violation of § 17-5-302 has occurred; provided, that no subpoena shall issue to obtain testimony or evidence until the investigative panel authorizes a full investigation pursuant to subdivision (3) of this subsection (c).

(2) If disciplinary counsel believes there is evidence supporting the allegations against a judge, the counsel shall recommend to the investigative panel assigned to the case that the panel authorize a full investigation. Disciplinary counsel may also recommend a full investigation when it believes that there is evidence that would establish probable cause that a violation of § 17-5-302 has occurred and such evidence could be obtained by subpoena or further investigation. In all other cases, the disciplinary counsel must recommend that the matter be dismissed.

(3) The investigative panel shall review the disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation. Disciplinary counsel shall not have the authority to dismiss a complaint without the review of and approval by the investigative panel.

(4) Where a judge retires or resigns and the disciplinary counsel is in possession of information that indicates criminal conduct by that judge, the disciplinary counsel shall transmit such information to the Tennessee bureau of investigation.

(d)

(1) Within thirty (30) days after the investigative panel authorizes a full investigation, disciplinary counsel shall give the following notice to the judge by certified mail:

(A) A specific statement of the allegations being investigated and the canons or rules allegedly violated, with the provision that the investigation can be expanded if appropriate;

(B) The judge's duty to respond;

(C) The judge's opportunity to meet with disciplinary counsel; and

(D) The name of the complainant, unless the investigative panel determines that there is good cause to withhold that information.

(2) The investigative panel may defer the giving of notice; however, notice must be given pursuant to this section before making a determination other than dismissal of the complaint.

(3) Disciplinary counsel may request that the judge file a written response within thirty (30) days after service of the notice.

(e)

(1) Upon the conclusion of the disciplinary counsel's investigation, disciplinary counsel may recommend to the investigative panel any or any combination of the following:

(A) Dismissal;

(B) Private reprimand, private censure, deferred discipline agreement, public reprimand, or public censure;

(C) The filing of formal charges;

(D) Referral to an appropriate agency; or

(E) A stay.

(2) The investigative panel may adopt, reject or modify the recommendations of disciplinary counsel. If the investigative panel finds a violation for which the imposition of discipline is not warranted, it may dismiss the complaint. If the investigative panel finds that there is reasonable cause to believe the judge committed a judicial offense:

(A) It may direct disciplinary counsel to file formal charges;

(B) It may propose any or a combination of the following: private reprimand, private censure, deferred discipline agreement, public reprimand or public censure to the judge. If the judge consents, the investigative panel shall impose the discipline or implement the deferred discipline agreement; or

(C) If the judge does not consent to the proposed discipline or the deferred discipline agreement, the investigative panel may direct disciplinary counsel either to file formal charges or dismiss the complaint.

(f) In the event the investigative panel finds that there is reasonable cause to believe that the judge committed a judicial offense, and the investigative panel directs disciplinary counsel to file a formal charge, then from the filing of the formal charge forward, all records, actions and proceedings of the board shall be subject to the provisions of § 10-7-503 and title 8, chapter 44, except that the board may deliberate in private.

(g) Upon the filing of an indictment, presentment or information charging a judge with a felony under the law of any state or under federal law, the board may immediately place the judge on interim suspension.

SECTION 6. Tennessee Code Annotated, Section 17-5-305, is amended by deleting the language “the court’s” each time that language appears and by substituting instead the language “the board’s”.

SECTION 7. Tennessee Code Annotated, Section 17-5-307(f), is amended by deleting the second sentence and by substituting instead the following:

Absent good cause, the hearing panel or board shall not continue or delay proceedings because of the judge's failure to appear.

SECTION 8. Tennessee Code Annotated, Section 17-5-314, is amended by deleting subsection (a) and substituting instead the following:

(a) The expenses incurred in the administration of this chapter involving additional pay to retired judges, together with expenses incurred in paying witnesses per diem and travel expenses, where applicable as provided in §§ 24-4-101 and 24-4-102, expenses in the taking of depositions, and expenses incurred in the reporting of any proceeding under this chapter shall be paid through the secretary of state.

SECTION 9. For purposes of appointing the members of the board of judicial conduct created by this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on October 1, 2012, the public welfare requiring it.